



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Fish Construction Inc.--Reconsideration

**File:** B-242464.2

**Date:** February 21, 1991

Marionetta L. Cooper for the protester.  
John M. Melody, Esq., Office of the General Counsel, GAO,  
participated in the preparation of the decision.

### DIGEST

Decision dismissing as untimely protest against agency's failure to furnish protester with proper address for bid modification is affirmed where protest was not filed until more than 10 working days after the protest basis was known.

### DECISION

Fish Construction Inc. requests reconsideration of our January 3, 1991 dismissal of its protest under invitation for bids (IFB) No. YA-651-IFBO-240091, issued by the Department of the Interior.

We affirm the dismissal.

Fish argued in its protest that the agency improperly had given the firm a mailing address in response to its request for a physical address for purposes of submitting a modification to its bid, and that its attempted modification was late as a result. We dismissed the protest on the ground that if, as it appeared, the agency refused to give the firm a proper address before bid opening, that was a matter that had to be raised in a protest before bid opening. We concluded that Fish's protest filed after bid opening thus was untimely under our Bid Protest Regulations, which require that protests of alleged solicitation improprieties be protested to the agency or our Office prior to bid opening to be timely. 4 C.F.R. § 21.2(a)(1) and (3) (1990).

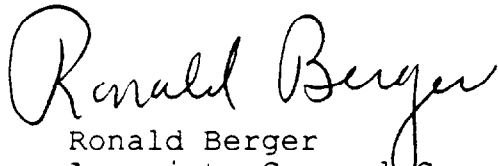
In its reconsideration request, Fish argues that its protest in fact was timely since it was not aware that the address received from the agency was wrong until after bids were actually opened on October 23. Based on this information, which was not evident from the face of Fish's protest, we agree that the protest was not untimely for the reason stated

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in our January 3 dismissal. However, there remains a second 'timeliness consideration that is dispositive of the matter.

In addition to the timeliness rule set forth in our dismissal, our Regulations require that protests based on other than solicitation defects be filed no later than 10 working days after the basis of protest was or should have been known. 4 C.F.R. § 21.2(a)(2). Fish did not satisfy this requirement. Fish states that it first learned of the incorrect address given it by Interior on October 23, when it became aware that its attempted modification had not been delivered prior to the bid opening time. This being the case, Fish's protest on this ground had to be filed no later than 10 working days after October 23. As Fish protested to the agency for the first time by letter dated December 19 (and subsequently to our Office on December 27), its protest was untimely.

The dismissal is affirmed.

  
Ronald Berger  
Associate General Counsel